

**CITY OF FREDERICK**  
**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**May 25, 2010**

<b>MEMBERS PRESENT:</b>	<b>STAFF PRESENT:</b>
<b>Mr. Jim Racheff</b> <b>Ms. Gail Colby</b> <b>Mr. Edward Hazlett</b> <b>Mr. Marvin Kennedy</b> <b>Mr. Dario Cavazos</b> <b>Mr. Philip Dacey</b>	<b>Gabrielle Dunn, Division Manager of Current Planning</b> <b>Lea Ortiz, Office Manager</b> <b>Scott Waxter, Assistant City Attorney</b> <b>Jeff Love, City Planner</b>

**ANNOUNCEMENTS**

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For the benefit of the audience and especially the applicants, Mr. Racheff, Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

## **APPROVAL OF MINUTES:**

December 22, 2009

**MOTION:** Ms. Colby moved to approve the December 22, 2009 Zoning Board of Appeals minutes as published.

**SECOND:** Mr. Cavazos

**VOTE:** 4-0

## **GENERAL PUBLIC COMMENT**

There was no general public comment.

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## **ELECTION OF OFFICERS**

Ms. Colby nominated Mr. Racheff for Chairman, seconded by Mr. Hazlett, 4-0 vote

Ms. Colby nominated Mr. Hazlett for Vice Chairman, seconded by Mr. Cavazos, 4-0 vote

Mr. Hazlett nominated Ms. Colby for Secretary, seconded by Mr. Cavazos, 4-0 vote

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## **CASES TO BE HEARD**

**CASE NO.: ZBA10-120CU, Conditional Use, Bombay Grill**

**LOCATION: 137 North Market**

**APPLICANT: JPS, Inc. DBA Bombay Grill C/O Jaikishan Sachdev**

**DESCRIPTION:**

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The Applicant is requesting approval of a conditional use in accordance with Section 308 and 856 of the Land Management Code for a restaurant with entertainment located at 137 N Market. (NAC #11) (**Love**)

**STAFF RECOMMENDATION:**

Based upon the findings of fact, Staff recommends approval of the conditional use request for a restaurant with entertainment finding that:

- 1. The policies and regulations found in both the 2010 Comprehensive Plan and the Land Management Code (LMC) support the downtown as a center for arts and entertainment and that the proposed inclusion of entertainment at the existing restaurant is in harmony with these goals.
- 2. The DB zoning district permits a variety of uses including many that generate a high volume of pedestrian and vehicular traffic. Compliance with the criteria established under Section 856 of the LMC will ensure that the proposed use will not create a greater adverse impact than any use permitted by right in the DB district.
- 3. The proposed use of the restaurant to include entertainment complies with the provisions of Article 8, Section 856 entitled *Restaurant with Entertainment* based on the following:
  - a. The restaurant sells unpackaged food to the consumers in a ready-to-consume state, in individual servings or in non-disposable containers, where the

customer consumes these foods while seated at tables located within the building.

- b. There is regular seating (not including seats at a counter or bar) for 88.9% of the overall seating capacity.
- c. The Applicant has provided a quarterly sales report which indicates that alcohol sales only are approximately 12.8% of the overall revenue.
- d. The Applicant has indicated that the entertainment to be provided will not include sexual conduct, nudity, or obscenity.
- e. The Applicant has assured the Board their consent to the conditions of approval and that noncompliance may result in termination of the zoning certificate for a restaurant with entertainment.
- f. That all activity at the restaurant will comply with Section 15-21 of the City Code.

With the following conditions of approval:

- 1) In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use within 2 years of approval or the approval shall become void.

### **APPLICANT PRESENTATION:**

Mr. Jaikishan Sachdev whose business is located at 137 North Market Street, Frederick, MD 21701 stated the entertainment would take place in the back left corner of the building.

### **DISCUSSION:**

Mr. Hazlett asked if there were any tenants above the restaurant. Mr. Sachdev mentioned there was an office, but it was not occupied.

Mr. Hazlett wanted to know what type of band and DJ in their establishment. Mr. Sachdev explained the band and DJ would be an international band that would not be loud enough to hear outside.

Mr. Hazlett also mentioned that the ZBA had approved another establishment with entertainment based on the condition that they have the windows screened. Mr. Sachdev indicated he would screen the windows according to the Liquor Board regulations. Mr. Sachdev also mentioned that the dancing would be an Indian folk dance.

Mr. Waxter wanted the applicant to know that if they intend to screen the windows of their establishment they would have to go before the Historic District Commission for approval if the treatment were applied directly to the windows. The Applicant indicated the screening would be inside his restaurant.

Ms. Colby wanted to know what the sound levels would be. Mr. Sachdev indicated that the volume will comply with the City regulations.

There was discussion as to what time this establishment is open during the week and weekends as well as what times would be appropriate for them to have entertainment during these times. It was agreed by the Board that the live entertainment would cease at 10 P.M. Sunday through Thursday and no later than 1 A.M. on Friday and Saturday.

### **PUBLIC COMMENTS:**

There were no public comments.

**Motion:**        **Mr. Hazlett moved to approve ZBA10-120CU, Bombay Grill finding that:**

- 1)    The policies and regulations found in both the 2010 Comprehensive Plan and the Land Management Code (LMC) support the downtown as a center for arts and entertainment and that the proposed inclusion of entertainment at the existing restaurant is in harmony with these goals.
- 2)    That the DB zoning district permits a variety of uses including many that generate a high volume of pedestrian and vehicular traffic and if conducted in accordance with the testimony provided and all applicable regulations, the characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.
- 3)    The proposed use of the restaurant to include entertainment complies with the provisions of Article 8, Section 856 entitled *Restaurant with Entertainment* based on the following:
  - 1.    The restaurant serves unpackaged food to the consumers in a ready-to-consume state or in non-disposable containers, where the customer consumes these foods while seated at tables located within the building.
  - 2.    There is regular seating capacity (not including seats at a counter or a bar) for 88.9% of the overall seating capacity.
  - 3.    The Applicant has provided a quarterly sales report which indicates that alcohol sales are only approximately 12.8% of the overall revenue.
  - 4.    That the Applicant has indicated that the entertainment will not that include sexual conduct, nudity, or obscenity.
  - 5.    The Applicant has assured the Board their consent to the conditions of approval and that noncompliance may result in termination of the zoning certificate for a restaurant with entertainment.
  - 6.    That all activity at the restaurant will comply with §15-21 of the City Code.

**Conditions:**

- 1. In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use within 2 years of the approval or the approval shall become void.
- 2. Live entertainment shall cease no later than 10 PM Sunday through Thursday and no later than 1 AM Friday through Saturday.
- 3. The live entertainment shall be screened from view from the outside of the restaurant, said screening not to be inconsistent with Liquor Board regulations.

**Seconded: Ms. Colby**

**Vote: 4-0**

**The meeting adjourned at 7:35 p.m.**

Respectfully submitted,

Lea M. Ortiz